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**In the Matter Of:**

**Estate of Harry Smith, III, et al.**

**V.**

**Wilmington Police Department, et al.**

**C.A. # 04-1254-GMS**

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**Transcript of:**

**David Nathaniel Gwyn**

**August 24, 2005**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ESTATE OF HARRY SMITH, III,       )  
HARRY SMITH, JR., and               )  
ROSLYN WOODARD SMITH,               )  
  )  
                                  Plaintiffs,       )  
  ) Civil Action No.  
v.                                        ) 04-1254-GMS  
  )  
WILMINGTON POLICE DEPARTMENT,       )  
MICHAEL SZCZERBA and ONE OR        )  
MORE JOHN DOES,                        )  
  )  
                                  Defendants.        )

Videotape deposition of DAVID NATHANIEL GWYN  
taken pursuant to notice at the law offices of Richards,  
Layton & Finger, One Rodney Square, Third Floor,  
Wilmington, Delaware, beginning at 10:34 a.m. on  
Wednesday, August 24, 2005, before Kathleen White Palmer,  
Registered Merit Reporter and Notary Public.

APPEARANCES:

ANNE T. SULTON, PH.D., ESQUIRE  
P.O. Box 2763  
Olympia, Washington 98507  
for the Plaintiffs  
JOHN A. PARKINS, JR., ESQUIRE  
RICHARDS, LAYTON & FINGER  
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Wilmington, Delaware 19899  
for the Defendants Wilmington Police  
Department and Michael Szczerba

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SA2

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1 ALSO PRESENT:  
2 HARRY SMITH, JR.  
3 ROSLYN WOODARD SMITH  
4 KEITH R. BOOKER, NAACP  
5 CHARLES E. BRITTINGHAM, NAACP  
6 CAROL FEELEY, Videographer  
7 -----  
8 (Gwyn Exhibit 1 was marked for  
9 identification.)  
10 THE VIDEOGRAPHER: This is the videotape  
11 deposition of David Nathaniel Gwyn taken by the defendant  
12 in the matter of Estate of Harry Smith, III, Harry Smith,  
13 Jr., and Roslyn Woodard Smith vs. The Wilmington Police  
14 Department, Michael Szczerba, and One or More John Does,  
15 Civil Action No. 04-1254-GMS, held in the office of  
16 Richards, Layton & Finger, Wilmington, Delaware, on  
17 August 24th, 2005, at approximately 10:34 a.m.  
18 The court reporter is Kathy White Palmer  
19 from the firm of Wilcox & Fetzer. My name is Carol  
20 Feeley, a video specialist from Discovery Video Services  
21 in association with Wilcox & Fetzer.  
22 Counsel will introduce themselves and the  
23 reporter will swear in the witness.  
24 MS. SULTON: Attorney Anne Sulton appears

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1 on behalf of the plaintiffs.  
2 And the plaintiffs, Harry Smith, Jr., and  
3 Roslyn Woodard Smith, appear in person.  
4 MR. PARKINS: I'm John Parkins. I  
5 represent the defendants.  
6 -----  
7 DAVID NATHANIEL GWYN,  
8 the witness herein, having first been  
9 duly sworn on oath, was examined and  
10 testified as follows:  
11 BY MR. PARKINS:  
12 Q. Mr. Gwyn, we've met briefly before the  
13 deposition. My name is John Parkins. I represent the  
14 defendants in the lawsuit that has been filed by the  
15 estate of Harry Smith, III, and Mr. Smith's parents. I'm  
16 about to ask you a series of questions.  
17 Do you understand that your answers are  
18 under oath?  
19 A. Mm-hmm.  
20 Q. Do you understand, sir, that the Court and  
21 perhaps the jury may rely upon what you have to say  
22 today?  
23 A. Mm-hmm.  
24 Q. You need to say yes for the court reporter.

Page 4

1 A. Yes, yes.  
2 Q. Are you taking any medications which would make  
3 it difficult for you to hear me or to understand my  
4 questions?  
5 A. No.  
6 Q. Do you suffer from any hearing difficulties?  
7 A. No.  
8 Q. Are you suffering from any illnesses today that  
9 would make it difficult for you to give your deposition?  
10 A. No.  
11 Q. At any time during your deposition if I ask you  
12 a question which is unclear to you, will you agree that  
13 you will ask me to clarify it?  
14 A. Mm-hmm, yes.  
15 Q. And at any time during your deposition you would  
16 like to take a break, would you agree that you'll ask me  
17 to do so and we'll be happy to accommodate you?  
18 A. Yes.  
19 Q. Mr. Smith, where do you live -- Mr. Gwyn, where  
20 do you live?  
21 A. 507 North Harrison Street.  
22 Q. Did you live at 507 North Harrison Street on  
23 September 13, 2003?  
24 A. Yes, I did.

Page 5

1 Q. Would you tell me what you observed on  
2 September 13, 2003?  
3 MS. SULTON: Objection. If you could be  
4 more specific as to the time of the day.  
5 Q. Tell me about what you observed on the evening  
6 of September 13, 2003.  
7 A. About what time?  
8 Q. Well, why don't you tell me and we'll start at  
9 5:00 what you remember seeing until we get to the point  
10 that's important?  
11 A. At 5:00?  
12 Q. Yes.  
13 A. I can't recall what I saw at 5:00.  
14 Q. Beg your pardon?  
15 A. I can't recall what I saw at 5:00.  
16 Q. What's the first thing you remember seeing on  
17 September 13, 2003?  
18 A. Well, you got me a little bit confused. Where  
19 you starting from?  
20 Q. It doesn't matter. I'm just trying to figure  
21 out. You observed some events that occurred on  
22 September 13th, 2003, that allegedly give rise to this  
23 lawsuit. I'm trying to see what you remember having  
24 seen. So tell me what you remember about September 13th,

2 (Pages 2 to 5)

Page 6

1 2003.  
2 A. So you are referring to this? That's what I'm  
3 trying to --  
4 Q. Yes.  
5 A. Oh, okay.  
6 Q. Sure. I'm sorry.  
7 A. Okay. You had me a little bit confused there.  
8 Q. That's all right.  
9 A. Well, it was a warm, nice evening and just about  
10 all the neighbors were sitting outside. Me and my wife,  
11 we had brought chairs out and we were sitting out in  
12 front of our house.  
13 And the first thing that I saw was a police  
14 car shooting down Harrison Street going the wrong way and  
15 it was flying. And it turned a corner on 4th Street.  
16 And I heard some commotion on 5th Street.  
17 So I said to my wife, I said, "Something  
18 must be going on around the corner." So I gets up and I  
19 start walking towards the corner. And I saw this police  
20 car turn the corner on 5th Street up Harrison Street,  
21 which Harrison is a one-way street, and it was a -- it  
22 was a -- not a van -- it was a jeep sitting on the  
23 corner. And the police car struck the jeep -- I mean hit  
24 the jeep and started up from Harrison Street.

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1 Well, about that time I was about, I'd say,  
2 halfway down the block. And then I saw three polices  
3 come running and they started shooting. So everybody  
4 started running, I mean, for cover. I couldn't make it  
5 back to my house, so I jumped on my neighbor's porch.  
6 And the police, there was three of them, start shooting,  
7 pop, pop, pop, pop, pop, pop, pop, pop, pop. And I stood  
8 on my neighbor's porch there. I didn't move. With all  
9 the shots, I was afraid to move. I was afraid to go  
10 anywhere. And my wife, she ran inside the house.  
11 And as the car -- I mean, it was moving up  
12 Harrison Street, the three polices just kept shooting,  
13 pop, pop, pop, pop, pop, pop, pop.  
14 And then the car came to a stop. I saw the  
15 man -- I mean, the man had slumped over and the police  
16 was -- just kept on shooting, pop, pop, pop, pop, pop.  
17 And then the car stopped. And I saw the police that was  
18 on the left, on the side where I was, grab the door and  
19 opened the door and pulled the man out.  
20 Q. Do you remember anything else?  
21 A. Well, I remember, I mean, quite a bit. I mean,  
22 I saw everything. And I'm standing there looking at the  
23 body and everything.  
24 Q. Let me ask you some specific questions and maybe

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1 that will prompt some further recollections on your part  
2 A. Sure.  
3 Q. You told me it was a nice, warm evening. Do you  
4 recall about what time of day it was?  
5 A. It was about -- I would say 7, 7 p.m.  
6 Q. Had the sun gone down?  
7 A. That I can't --  
8 Q. You said you were sitting outside with your wife  
9 in chairs.  
10 A. Mm-hmm, yes.  
11 Q. Were you in front of your house?  
12 A. Yes.  
13 Q. Were you on the sidewalk or were you on the  
14 porch or were you on the street?  
15 A. I was on the sidewalk in front of my house.  
16 Q. You say you saw a police car going down Harrison  
17 Street. I think that's the words you used. Does that  
18 mean southbound on Harrison Street -- excuse me -- yeah,  
19 Harrison Street?  
20 A. Yeah. Harrison Street comes up and the car was  
21 going down.  
22 Q. All right. Was it going towards 4th Street?  
23 A. Mm-hmm.  
24 Q. You need to say yes for the court reporter.

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1 A. Yes, yes. I'm sorry.  
2 Q. It's an easy mistake to make.  
3 A. I'm just used to it.  
4 Q. That's okay.  
5 Harrison Street is one way; is that  
6 correct?  
7 A. Yes.  
8 Q. Was the police car going in the correct  
9 direction when you saw it, the one that came down  
10 Harrison Street?  
11 A. No. It come down the one way.  
12 Q. It was coming down the wrong way?  
13 A. Mm-hmm.  
14 Q. You need to say yes again for the reporter.  
15 A. Yes.  
16 Q. Which way does Harrison Street run? Does it run  
17 towards --  
18 A. Fourth.  
19 Q. -- 4th Street?  
20 A. Mm-hmm.  
21 Q. This police car that you saw coming down  
22 Harrison Street, the first police car, was it going  
23 towards 4th Street?  
24 A. Mm-hmm. The first car, yeah.

3 (Pages 6 to 9)

Page 10

1 Q. Yes. And so the first police car that you saw  
2 was going in the correct direction on 4th -- on Harrison  
3 Street; is that correct?  
4 A. Yes.  
5 Q. You say you saw it go down to 4th Street and  
6 then turn around?  
7 A. Mm-mmm. Make a left.  
8 Q. Made a left onto 4th Street?  
9 A. Yeah.  
10 Q. Okay. Did it go down 4th Street then?  
11 A. Yes.  
12 Q. Did you see that police car again?  
13 A. I can't say I saw that one.  
14 Q. The next police car you saw was coming off of  
15 5th Street; is that correct?  
16 A. Yes.  
17 Q. Okay. You said that there was a commotion down  
18 at 5th Street. What do you mean by a "commotion"?  
19 A. I just heard some noise like something was going  
20 on.  
21 Q. What sort of noise did you hear?  
22 A. It was just like a commotion noise.  
23 Q. Were they human beings or were they people  
24 shouting or were they cars or what?

Page 11

1 A. Well, it was like -- it was like people -- like  
2 hollering, like.  
3 Q. You say you walked down towards 5th Street to  
4 see what was happening?  
5 A. Mm-hmm.  
6 Q. You need to say yes for the reporter.  
7 A. Yes, yes, yes.  
8 Q. All right. And how far did you get when you  
9 were walking down towards 5th Street?  
10 A. About halfway. I didn't get all the way down.  
11 Q. When you mean halfway, do you mean halfway from  
12 the distance between your house and the corner?  
13 A. Yes.  
14 Q. Were you on the west side of Harrison Street or  
15 the east side?  
16 A. (No response.)  
17 Q. Let me help you out a little bit.  
18 Is your house at 507 on the west side of  
19 Harrison Street?  
20 A. It's on the right-hand side going down.  
21 Q. If you're going down the hill, it's on the  
22 right-hand side?  
23 A. Yes.  
24 Q. All right. Now, were you on the same right-hand

Page 12

1 side when you walked down towards 5th Street?  
2 A. Yes.  
3 Q. All right. And then I gather that the next  
4 thing you saw was a police car turning the corner?  
5 A. Mm-hmm.  
6 Q. You need to say yes for --  
7 A. Yes, yes, yes, yes.  
8 Q. It's hard. I understand.  
9 A. Yes.  
10 Q. And it hit a white jeep or a jeep?  
11 A. Yeah. It was a white jeep.  
12 Q. White jeep?  
13 A. Mm-hmm.  
14 Q. Was the jeep parked?  
15 A. Yes.  
16 Q. Did the jeep spin around when it was hit?  
17 A. It knocked it out some.  
18 Q. All right.  
19 A. I won't say spin it around, but it knocked it  
20 out some.  
21 Q. Do you know if there was anyone in the jeep when  
22 it was hit?  
23 A. It was empty.  
24 Q. Okay. Did the -- did the police car that hit it

Page 13

1 have anyone in it other than the driver?  
2 A. No.  
3 Q. Did the police car that hit it drive on the  
4 sidewalk or did it -- was it on the street when it hit  
5 the jeep?  
6 A. When it hit the jeep was it on the sidewalk?  
7 Q. Let me back up.  
8 Did you notice any police cars or any other  
9 cars blocking 5th Street at the intersection with  
10 Harrison?  
11 A. I didn't see none.  
12 Q. Okay. Did you see the police car turn the  
13 corner from Harrison -- from 5th Street onto Harrison?  
14 A. Mm-hmm.  
15 Q. You need to say?  
16 A. Yes, yes, yes.  
17 Q. Okay. Was the police car in the street when it  
18 turned the corner?  
19 A. When it turned the corner was it in the street?  
20 Q. Was it in the street or did it go on the  
21 sidewalk?  
22 A. No, it didn't go on the sidewalk.  
23 Q. All right. So it was in the street and it  
24 turned the corner in the street and then hit the jeep?

4 (Pages 10 to 13)

Page 18

1 A. Yeah. They were together.  
2 Q. All three together?  
3 A. Mm-hmm.  
4 Q. How far apart were they?  
5 A. Well, they were close together. I can't  
6 say how -- I mean, I can't --  
7 Q. Okay.  
8 A. I can't say how far.  
9 Q. But they were standing near the intersection of  
10 5th and Harrison Street when they started shooting at the  
11 police car?  
12 A. They weren't standing. They were running.  
13 Q. They were running?  
14 A. Mm-hmm.  
15 Q. How far away from you were they?  
16 A. I made it down to about half a way the block.  
17 Q. Okay. Why don't you put a "2" there so we  
18 know what --  
19 A. Okay.  
20 Q. That describes where you were standing.  
21 And how far away were the police officers  
22 from you when they started shooting?  
23 A. Here's one house -- you say how far from me?  
24 Q. Yes.

Page 19

1 A. Oh, okay. I can't recall feet if that's what  
2 you want. I can't.  
3 Q. Okay. Can you estimate for me how far apart  
4 they were -- how far away they were from you? Were they  
5 ten feet away? Were they 50 feet away?  
6 A. I -- I can't...  
7 Q. All right. Did you see all three of the police  
8 officers firing their weapons?  
9 A. Yes, sir.  
10 Q. Were all three of the police officers in police  
11 uniforms or were some of them in plain clothes? Or how  
12 were they dressed?  
13 A. They were in uniforms, all three of them.  
14 Q. Did any of them have like a jacket that said  
15 "Police" on it, or were they all in their regular blue  
16 uniforms?  
17 A. They were in police -- police uniforms.  
18 Q. In their regular blue uniforms; is that correct?  
19 A. Police uniforms, yes.  
20 Q. Yes.  
21 A. They were.  
22 Q. Did you see the police running after the car or  
23 walking after the car?  
24 A. They was running.

Page 20

1 Q. Were they running in the same direction as the  
2 police car was going?  
3 A. Mm-hmm, yeah.  
4 Q. You need to say yes.  
5 A. Yes.  
6 Q. How many shots did you see the police officers  
7 fire?  
8 A. How many?  
9 Q. Yes.  
10 A. I just heard this here pop, pop, pop, pop, pop,  
11 pop, pop.  
12 Q. Well, how many is that?  
13 A. I can't say how many because they was -- just  
14 started shooting. I can't -- I can't say how many.  
15 Q. How close to the police car were they when they  
16 were shooting?  
17 A. From the time the police car turned the corner,  
18 after it hit the jeep, they started running behind the  
19 police car shooting. I mean, I can't say how many times.  
20 Q. How far away were they, though, from the police  
21 car?  
22 MS. SULTON: Objection. At what point in  
23 time?  
24 MR. PARKINS: At any time.

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1 MS. SULTON: I'm going to object to the  
2 form of the question because he said they were running.  
3 That's why I'm trying to get you to be more specific.  
4 MR. PARKINS: That's a fair question --  
5 objection.  
6 BY MR. PARKINS:  
7 Q. How close did the police get while they were  
8 still firing?  
9 A. Well, they got right up on the car.  
10 Q. How far away from the car?  
11 A. I can't -- I mean, I can't recall, I mean, no  
12 feet or nothing like that.  
13 Q. I'm sorry?  
14 A. I can't recall no feet or nothing like that.  
15 Q. Were they ten feet away? Were they five feet  
16 away? Were they closer?  
17 A. I can't recall, I mean, how many feet. I can't.  
18 Q. Were they shooting at the back of the car or the  
19 front of the car or the side of the car?  
20 A. No. They started out shooting at the back of  
21 the car.  
22 Q. Did they end up shooting at other parts of the  
23 car?  
24 A. When they -- one officer, and that's the one on

6 (Pages 18 to 21)

Page 34

1 Q. Okay.  
2 **A. Well, she didn't live across the street. I mean**  
3 **her mother, her mother did.**  
4 Q. Now, would you take a look at paragraph 6?  
5 **A. Mm-hmm.**  
6 Q. "After this police car hit the parked car, I saw  
7 what appeared to be an African American male slumped over  
8 the steering wheel of the car."  
9 How long after the police car hit the  
10 parked car was it before you saw Mr. Smith slumped over  
11 the wheel of the car?  
12 **A. Before it came to a stop.**  
13 Q. Okay. Did you at any time after the car --  
14 after the police car hit the parked car see him when he  
15 wasn't slumped over the wheel?  
16 **A. Say it again now.**  
17 Q. Let me back up.  
18 Was Mr. Smith slumped over the wheel of the  
19 police car when it hit the parked car?  
20 **A. Not when it hit the parked car, no. No.**  
21 Q. So he was able -- he was sitting upright at that  
22 time?  
23 **A. When it hit the parked car, I can't really --**  
24 **that's when I first looked and saw it, but I can't recall**

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1 **at that time, I mean, how he was.**  
2 Q. Okay. You said the man appeared to be  
3 unconscious and helpless and unarmed and unthreatening.  
4 How do you know he was unarmed?  
5 **A. Well, when they pulled him out and I was**  
6 **standing there looking, I never saw nothing, so --**  
7 Q. Okay.  
8 **A. I never saw no weapon or nothing.**  
9 Q. You then say in paragraph 7: "I then saw a  
10 Wilmington Police Department officer walk over to the  
11 side of this police car and fire shots into the body of  
12 the man slumped over the steering wheel."  
13 I think today you told me you don't  
14 remember whether they fired from the back or the side; is  
15 that correct?  
16 **A. And I said here that I saw --**  
17 Q. Paragraph 7.  
18 **A. I don't know who written this.**  
19 Q. You don't remember that? Do you think that  
20 paragraph 7 is not accurate?  
21 **A. I don't know who written it.**  
22 Q. Beg your pardon?  
23 **A. I don't know who written that.**  
24 Q. You don't remember that? I'm sorry. Do you

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1 remember what you said -- strike that.  
2 Do you remember a police officer walking  
3 over to the side of the car and firing shots into  
4 Mr. Smith's body?  
5 **A. Firing shots into his body?**  
6 Q. Yes.  
7 **A. (No response.)**  
8 Q. From the side of the car.  
9 **A. They was firing from behind the car just like I**  
10 **said. And all the way up until the car stopped, they**  
11 **just kept shooting.**  
12 Q. I understand that. But do you remember a police  
13 officer walking up to the side of the car and firing  
14 shots into Mr. Smith's body?  
15 **A. Now, repeat your question one more time. You**  
16 **say --**  
17 Q. Do you remember a police officer walking up to  
18 the side of the police car and firing shots into  
19 Mr. Smith's body?  
20 **A. I didn't see none of them walking. They was**  
21 **running.**  
22 Q. Did you see them run up to the side of the  
23 police car and fire shots into Mr. Smith's body?  
24 **A. I'm cloudy on that.**

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1 Q. The next I'd like you to take a look at  
2 paragraph 9. About halfway through that paragraph you  
3 say: "The man's bloody body laid on the street for  
4 hours, uncovered by any sheet or other material, and in  
5 full view of myself and other neighborhood residents."  
6 I thought you told me today, sir, that  
7 after the police tried CPR and Mr. Smith was pronounced  
8 dead they covered his body with a sheet.  
9 **A. I don't know how long it was. I don't -- I**  
10 **mean, I don't know exactly how long it was.**  
11 Q. Was it for hours?  
12 **A. I don't know how long he laid there before -- I**  
13 **know the body was -- I mean, the body was out there for**  
14 **hours and hours and hours. I don't know how long it took**  
15 **them to cover it.**  
16 Q. Okay.  
17 **A. I mean cover him up. I don't --**  
18 MR. PARKINS: I have nothing further.  
19 MS. SULTON: I have just a couple of  
20 clarifying questions.  
21 BY MS. SULTON:  
22 Q. I want to make certain that we're clear about  
23 the sequence of events, Mr. Gwyn. I'm going to draw a  
24 rough street intersection.

10 (Pages 34 to 37)

Page 38

1 If we assume that your house is here at 507  
2 Harrison, how many houses are there between your house  
3 and the end of the block -- and this would be 5th Street  
4 here?  
5 **A. Yes.**  
6 **Q.** Okay. And the street runs down the hill;  
7 correct, toward 5th Street?  
8 **A. Yeah. That's Harrison.**  
9 **Q.** So if your house is at 507, how many houses are  
10 there between your house and the end of the block?  
11 **A. 505 is my neighbor and then it's 503 and then**  
12 **there's like a garage that goes like this. So it's only**  
13 **two houses, but right beside the last house it's a**  
14 **garage that goes like that.**  
15 **Q.** Are there any buildings between the garage and  
16 the end of the block at 5th Street, any buildings of any  
17 kind between the garage and the 5th Street?  
18 **A. Now, this is the last house and the garage**  
19 **connect like that.**  
20 **Q.** Between this garage that connects to this house  
21 that is one over from your house, are there any buildings  
22 between that garage and 5th Street? Any buildings at  
23 all? Or is this building the last thing right before you  
24 get to the street, to 5th Street?

Page 39

1 **A. Yeah. The garage is.**  
2 **Q.** Okay. So the garage is -- where you placed the  
3 garage, it appears as though there is some distance  
4 between the end of the garage and the beginning of 5th  
5 Street; is that correct?  
6 **A. Wait. Let me get you straight now. Now say it**  
7 **again.**  
8 **Q.** Okay. So you live at 507?  
9 **A. Right.**  
10 **Q.** There's one house that would be to the right of  
11 your house if I'm heading down the hill toward 5th  
12 Street?  
13 **A. Yes. That's the porch I jumped on.**  
14 **Q.** All right. So you jumped on the porch of the  
15 house next to you.  
16 **A. Mm-hmm.**  
17 **Q.** Then there's another house and attached to that  
18 is a long garage; is that correct?  
19 **A. Yeah, but the garage don't go this way. It**  
20 **goes -- see? This is the end of it and then it goes up**  
21 **5th Street.**  
22 **Q.** Okay.  
23 **A. I mean, it's about -- it's about eight garages**  
24 **there. But they don't go like this way. They go on 5th**

Page 40

1 **Street.**  
2 **Q.** Okay. So if I'm at the -- if I am standing on  
3 5th Street, the first thing I would see as I looked down  
4 Harrison Street towards your home is this set of garages,  
5 the first building I would see?  
6 **A. The first building?**  
7 **Q.** Yes. If I'm standing here on 5th Street, I'm  
8 going to put a little X here, assuming I'm standing where  
9 this X is on 5th Street, if I'm looking down -- if I'm  
10 coming up to Harrison and looking down Harrison towards  
11 your house, the first thing I'd see are the garages;  
12 correct?  
13 **A. Not -- no. If you are here, you are facing the**  
14 **garages. But, see the -- but, see, they come down just**  
15 **like this and the last house is -- the last house is --**  
16 **how can I explain this good?**  
17 **All right. All right. These are the**  
18 **garages and at the end of the garage, that's where the**  
19 **last house is.**  
20 **Q.** Okay.  
21 **A. That's the best way I can put it.**  
22 **Q.** Okay. If we assume -- I'm going to do another  
23 schematic. I'm trying to make certain we have one that's  
24 clean when we finish. So here we have your house. I'm

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1 going to make that the circle and that's 507.  
2 **A. Mm-hmm.**  
3 **Q.** We then have another house. What address is  
4 that?  
5 **A. 505.**  
6 **Q.** 505. Then there's another house, that's 503?  
7 **A. Mm-hmm.**  
8 **Q.** And then we have this bank of garages; correct?  
9 **A. Mm-hmm.**  
10 **Q.** Then I have 5th Street?  
11 **A. Yeah, right, right, right.**  
12 **(Charles E. Brittingham is now present in**  
13 **the deposition room.)**  
14 **BY MR. PARKINS:**  
15 **Q.** I have Harrison Street that runs down the hill?  
16 **A. Right.**  
17 **Q.** At the point at which you heard the commotion,  
18 you were standing on your porch at 507?  
19 **A. I wasn't standing. We were sitting outside.**  
20 **Q.** At the point that you heard the commotion, you  
21 were sitting on your porch at 507 Harrison?  
22 **A. I wasn't sitting on my porch. I was sitting**  
23 **outside on the sidewalk. I wasn't sitting on my porch.**  
24 **Q.** You were sitting outside on the sidewalk in

11 (Pages 38 to 41)

Page 42

1 front of your home at 507?  
2 **A. Mm-hmm.**  
3 Q. You heard a commotion and then you got up and  
4 you went toward the sound of the commotion?  
5 **A. I started down. I was walking on my sidewalk --**  
6 **well, not my sidewalk, but the side that I live on. I**  
7 **didn't turn the corner, nothing like that. I didn't even**  
8 **make it down to the corner.**  
9 Q. Okay.  
10 MR. PARKINS: Anne, could I interrupt you  
11 for a second? We are almost out of tape. Do you want to  
12 switch tape?  
13 MS. SULTON: Yes.  
14 THE VIDEOGRAPHER: Going off the record at  
15 11:31 a.m.  
16 (A recess was taken at this time.)  
17 THE VIDEOGRAPHER: Going back on the record  
18 at 11:43 a.m.  
19 BY MS. SULTON:  
20 Q. Okay. Now I want to just make certain that  
21 we're clear.  
22 So you live at 507. At the time that  
23 the -- at the time that you began noticing the incident,  
24 you are sitting in front of your home. There is another

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1 house at 505?  
2 **A. 505.**  
3 Q. There's another one at 503, and then there's a  
4 bank of garages to which the house at 503 is attached?  
5 **A. Mm-hmm.**  
6 Q. Where -- could you mark on this piece of paper  
7 with an X where the first police officer that you noticed  
8 was at the point that you first noticed that officer?  
9 MR. PARKINS: Anne, before he does this, it  
10 strikes me that I neglected to have the drawing marked as  
11 an exhibit and, likewise, this one hasn't been marked.  
12 It would probably be easier if we were to  
13 ask the court reporter to first mark as Gwyn Exhibit 3  
14 the drawing that Mr. Gwyn did for me, and then mark yours  
15 as Gwyn Exhibit 4 so that when we read the transcript,  
16 we'll know what we are talking about.  
17 MS. SULTON: Very good. I agree.  
18 (Gwyn Exhibits 3 and 4 were marked for  
19 identification.)  
20 BY MS. SULTON:  
21 Q. Now referring to Gwyn Exhibit Number 4, can you  
22 tell me where, with marking by a small X, the first  
23 police officer was when you first saw him or her?  
24 **A. Yeah, but -- which officers are you talking**

Page 44

1 **about?**  
2 Q. How many officers did you see that day?  
3 **A. You mean the three? Is that what you are**  
4 **talking about?**  
5 Q. Well, let me back up.  
6 How many police officers did you see that  
7 day?  
8 MR. PARKINS: Objection to the form. Are  
9 you going to ask him before the shooting or afterwards?  
10 THE WITNESS: Yeah. That's --  
11 BY MS. SULTON:  
12 Q. Before -- before you heard a shot fired, how  
13 many police officers did you see?  
14 **A. Before the shots?**  
15 Q. Before you heard a shot fired, how many police  
16 officers did you see?  
17 **A. I saw the one going down by the house driving**  
18 **the car.**  
19 Q. Okay. That's one.  
20 **A. And you say before, before the shots?**  
21 Q. Before you remember hearing any shots fired, how  
22 many police officers did you see? We counted the one who  
23 was driving the car past your house.  
24 **A. Mm-hmm.**

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1 Q. Did you see any other police officer before you  
2 heard shots fired?  
3 **A. I didn't see no more.**  
4 Q. Okay. You heard a commotion?  
5 **A. Yeah. I heard some noise.**  
6 Q. Did you see any police officers, other than the  
7 officer driving the car down Harrison Street, did you see  
8 any other police officers before you heard the commotion?  
9 **A. No, I can't.**  
10 Q. Between the time that you heard the commotion  
11 and you heard the shots fired, how many police officers  
12 do you remember seeing?  
13 **A. Before -- after -- after the commotion?**  
14 Q. Right, which alerted you to some problem was  
15 going on.  
16 **A. And before the shots.**  
17 Q. And before the shots were fired, how many police  
18 did you see? And we'll count the one, the one who was  
19 driving, we've already got him counted, the one who was  
20 driving down Harrison Street in the car. How many other  
21 police did you see?  
22 **A. None.**  
23 Q. None. So the first time you saw any police  
24 officers was when you heard shots fired?

12 (Pages 42 to 45)

Page 46

1 **A. Not counting the one that was going down the**  
2 **street?**  
3 Q. Correct. So if we take out the officer who was  
4 driving the patrol car down Harrison Street, if we take  
5 him out, is it fair to say that you saw no police  
6 officers until you heard shots being fired?  
7 **A. Yeah.**  
8 Q. Once you heard shots being fired, how many  
9 officers did you see?  
10 **A. Three.**  
11 Q. Only three?  
12 **A. Mm-hmm.**  
13 Q. And you saw those three where? Put an X where  
14 you first saw those three officers.  
15 **A. And this is 5th Street; right?**  
16 Q. Yeah, that's 5th Street.  
17 **A. (Complies.)**  
18 Q. All right. So where you put that X is where you  
19 saw those three officers, and at the time that you first  
20 spotted them, they were firing their weapons; is that  
21 correct?  
22 **A. Yes.**  
23 Q. Okay. I'm going to give you a red pen.  
24 At the time you first saw those officers

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1 where you put that X, put a red X where you physically  
2 were standing.  
3 MR. PARKINS: Can I make a suggestion? The  
4 red is never going to show up differently on the  
5 photocopies. Maybe we could use a Y or something like  
6 that instead.  
7 MS. SULTON: No. I want a red X. Thank  
8 you.  
9 MR. PARKINS: All right.  
10 MS. SULTON: We'll attach the original to  
11 the deposition.  
12 MR. PARKINS: It won't be on mine. That's  
13 the problem.  
14 MS. SULTON: Then you can have it if you  
15 feel comfortable with it, but I want it in red.  
16 MR. PARKINS: Okay.  
17 BY MS. SULTON:  
18 Q. So put a red X where you were standing.  
19 **A. When I first --**  
20 Q. When you first saw these three officers firing  
21 their shots, where were you standing?  
22 **A. Okay. I left my house. I had got by 505 --**  
23 Q. Was there anything between you and the three  
24 officers that you saw, a tree, a car, a building, a

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1 person, anything that blocked your view from seeing those  
2 three officers?  
3 **A. No.**  
4 Q. So you had an unobstructed view of those three  
5 officers; is that correct?  
6 **A. I could see clearly.**  
7 Q. Okay.  
8 **A. Is that what you mean?**  
9 Q. Well, there wasn't anything --  
10 **A. No, no, no.**  
11 Q. -- that was blocking your view?  
12 **A. No, no.**  
13 **Man, I'm getting chilly now.**  
14 Q. Blue. I'm going to give you a blue pen. With  
15 this blue pen, mark on this Gwyn Deposition  
16 Exhibit Number 4 where the police car in which Harry  
17 Smith, III, was riding stopped with an X.  
18 **A. With an X?**  
19 Q. Yes. Just make an X right over that.  
20 **A. (Complies.)**  
21 Q. So the car that Harry Smith, III, was driving  
22 was a police car and it stopped in front of your house?  
23 **A. Mm-hmm.**  
24 Q. Was there anything obstructing your view, was

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1 there anything between you and that car, a tree, another  
2 car, a person that blocked your view, anything at all?  
3 **A. Mm-mmm.**  
4 Q. When this car stopped as you've marked the X in  
5 front of your house, where were you physically standing?  
6 Were you still where you marked the first red X or had  
7 you physically moved?  
8 **A. Mm-mmm.**  
9 Q. All right. So we're going to mark this first  
10 red X, we are going to put that as our X1. So what I  
11 want you to do on this piece of paper is put an X, a  
12 second X where you were when you saw this police car that  
13 Harry Smith, III, was in stopped. So put another X on  
14 there where you physically were when you saw that car  
15 stop.  
16 **A. I was on the porch at 505.**  
17 Q. Okay. Well, put an X as best you can.  
18 **A. At 505?**  
19 Q. Okay. All right. So you were actually on the  
20 porch at 505. So we'll call that X2. Okay. I'll put a  
21 little "2" next to that. So that's X2.  
22 So X1 you are actually on the sidewalk?  
23 **A. Mm-hmm.**  
24 Q. All right. So I'm just going to make a legend

13 (Pages 46 to 49)

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1 here. X1 equals Gwyn on sidewalk. X2 equals Quinn on  
2 porch.  
3 So X1 is equal to Gwyn on sidewalk in front  
4 of 505, and X2 is Gwyn on porch of 505; is that correct?  
5 **A. One --**  
6 Q. Okay. X1 is where you were standing on the  
7 sidewalk when you first saw the police officers; correct?  
8 **A. Yes, yes, yes.**  
9 Q. And you were on the sidewalk; is that right?  
10 **A. There I go again. Yes.**  
11 Q. Okay. And then X2 is when you saw that car come  
12 to a stop in front of your house, you were actually on  
13 the porch at 505; is that correct?  
14 **A. Yes.**  
15 Q. At any time during -- from the point at which  
16 you saw these police officers, these three police  
17 officers reflected in this black X, and let me just  
18 complete our legend here, so the black X equals three  
19 police officers; correct?  
20 **A. (No response.)**  
21 Q. When first seen; correct?  
22 **A. (No response.)**  
23 Q. If I'm not correct, tell me so I can correct it.  
24 **A. No, no.**

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1 Q. This black X here reflects --  
2 **A. Oh, okay.**  
3 Q. -- the three police officers when you first saw  
4 them?  
5 **A. Yes.**  
6 Q. All right. So I'm going to say the black X  
7 equals three police officers when first seen; correct?  
8 **A. Mm-hmm.**  
9 Q. All right. And then the blue X equals -- the  
10 blue X is where car stopped; correct?  
11 **A. Mm-hmm.**  
12 Q. Is that correct?  
13 **A. Mm-hmm.**  
14 Q. You have to say yes.  
15 **A. Yes, yes.**  
16 Q. That's all right.  
17 At any time, Mr. Gwyn, between the time  
18 that you first saw the three police officers and you saw  
19 the car come to rest in front of your home, was your view  
20 ever blocked by anything, trees, cars, other people?  
21 **A. No.**  
22 Q. Never?  
23 **A. Never.**  
24 Q. Was it dark outside or was it still some

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1 daylight left?  
2 **A. It was daylight. It wasn't dark. It was**  
3 **daylight.**  
4 Q. So you wear glasses. Did you have your glasses  
5 on that day?  
6 **A. I wear them all the time.**  
7 Q. You wear them all the time?  
8 **A. Mm-hmm.**  
9 Q. Did the police officers come running past you?  
10 **A. Yes.**  
11 Q. So the police officers would have -- we are  
12 going to stay with black for the police officers and I'm  
13 going to do like a little dot, dot, dot.  
14 So the police officers came running past  
15 you up Harrison Street; is that correct, toward the car?  
16 **A. Yes.**  
17 Q. And at no point was your view blocked; is that  
18 right?  
19 **A. Yes.**  
20 Q. And all the while as the officers were moving  
21 from 5th Street to in front of your house where that car  
22 was stopped, they were firing their guns?  
23 **A. Yes.**  
24 Q. The entire time?

Page 53

1 **A. Yes.**  
2 Q. At what point did they stop firing their guns?  
3 **A. When they got -- excuse me. When they got all**  
4 **the way -- all the way in back of the car and that car**  
5 **had stopped, the car had stopped and they fired all the**  
6 **way up into the back of the car.**  
7 Q. So they fired -- they fired their guns even  
8 after the car stopped?  
9 MR. PARKINS: Objection to the form.  
10 MS. SULTON: I'll withdraw the question.  
11 BY MS. SULTON:  
12 Q. Had the -- were the officers still firing their  
13 car --  
14 **A. Their guns.**  
15 Q. -- their guns, were the officers still firing  
16 their guns after the car had stopped?  
17 **A. Yeah. Wait a minute. Now, say it again.**  
18 Q. Were the officers still firing their guns after  
19 the car stopped?  
20 **A. Yes.**  
21 Q. Using the blue pen to represent the car, the  
22 blue represents the car, where was the car when you first  
23 saw it? When you first noticed that car, where was it?  
24 **A. The police car?**

14 (Pages 50 to 53)

Page 54

1 Q. Yes. Put an X where you first saw that car.  
2 **A. (Complies.)**  
3 Q. Okay. We are going to mark that as X1. So X1  
4 equals where car first seen.  
5 And if I were to do a dot, dot, dot line,  
6 is it fair to say that the car went from this corner over  
7 directly in front of your house, kind of at a straight  
8 diagonal, or did it weave around as you were observing  
9 it?  
10 **A. Now, wait a minute now.**  
11 Q. Okay. So this is where the car was when you  
12 first saw it; right?  
13 **A. Mm-hmm.**  
14 Q. And then it ended up in front of your house?  
15 **A. Mm-hmm.**  
16 Q. So can you do a dot, dot, dot to kind of show  
17 how that car moved? Did it go in a straight line, or did  
18 it kind of weave around before it came to a stop as best  
19 you can recall the path of the car?  
20 **A. Now -- (complies.)**  
21 Q. So let me make sure I'm asking the question  
22 clearly.  
23 So the car was here when you first saw it;  
24 correct, at the corner of Harrison and 5th Street?

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1 **A. Mm-hmm.**  
2 MR. CROSSE: Yes or no?  
3 THE WITNESS: Oh, yes. Yes.  
4 BY MS. SULTON:  
5 Q. Okay. So we are going to call that X1. Okay?  
6 And did the car then make a -- what was the  
7 path the car took before it got to your house? Did it  
8 come this way and go straight down the street and then  
9 come back, or did it go straight in front of --  
10 **A. No, it didn't come back at all.**  
11 Q. Okay. So which direction did it head? What was  
12 that path?  
13 **A. First it hit that jeep right here.**  
14 Q. Okay. So it hit that jeep.  
15 **A. And it came out sort of like this and then**  
16 **turned up --**  
17 Q. And it came to rest right in front of your  
18 house?  
19 **A. Yes.**  
20 Q. Okay. So should this X here be on the other  
21 side of the street, or did the car end up right in front  
22 of your home?  
23 **A. Well, it was like in the middle of the street.**  
24 Q. In the middle of the street. Okay.

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1 So we are going to then say that -- we want  
2 to make a notation. I'm going to do a little line here  
3 that X equals car stopped. And you said kind of in the  
4 middle of the street?  
5 **A. Yeah.**  
6 Q. Okay.  
7 **A. Yeah.**  
8 Q. I'll say kind of in middle.  
9 **A. I didn't forget that time, said mm-hmm.**  
10 Q. Okay. So the officers were still firing when  
11 the car came to a stop; is that correct?  
12 **A. Yeah.**  
13 MR. PARKINS: Objection to the form.  
14 Q. You were able to see Mr. Smith in the car?  
15 MR. PARKINS: Same objection.  
16 MS. SULTON: I'll withdraw that question.  
17 BY MS. SULTON:  
18 Q. At the time that you first saw the police car  
19 that we've marked as X1, were you able to see Mr. Smith  
20 in the vehicle?  
21 **A. From the time we marked --**  
22 Q. So don't mark on here yet.  
23 So when you first saw the --  
24 **A. I'm not going to mark it, but I'm just pointing.**

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1 Q. Right. So when you first saw the car, were you  
2 able to see Mr. Smith in the car?  
3 **A. (No response.)**  
4 Q. Did you notice the driver at all?  
5 **A. Not at that point.**  
6 Q. At what point did you notice that the car had a  
7 driver?  
8 **A. When he turned up Harrison Street.**  
9 Q. Okay. So when you first noticed that the car  
10 had a driver, was that driver sitting upright in that  
11 car? When you first noticed that the car had a driver,  
12 was the driver sitting upright?  
13 **A. When I first saw him, yes, but then he slumped**  
14 **over.**  
15 Q. Okay.  
16 **A. But not when I first saw him.**  
17 Q. At what point when you saw this car that you now  
18 realized had a driver, at what point did you notice that  
19 driver slump over? Can you put an X -- and let's use  
20 blue. We're going to make this our X2. So put an X  
21 where you first noticed that driver was slumped over in  
22 that car.  
23 **A. (Complies.)**  
24 Q. Okay. So we're going to call that X2 continuing

15 (Pages 54 to 57)

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1 with our little legend. X2 equals first noticed driver  
2 slumped over.  
3 Was he slumped over the steering wheel or  
4 how was he slumped? Over the back of the seat? On the  
5 side of the seat? How did you see the driver slumped?  
6 **A. No. When I first saw him, he was like this. He**  
7 **was slumped over like that.**  
8 Q. Was he slumped over the steering wheel or --  
9 **A. From my -- I mean, from my recollection, he**  
10 **wasn't right straight like that, but he was -- he was**  
11 **sort of like that. Not -- not all the way down.**  
12 Q. Okay.  
13 **A. No.**  
14 Q. The driver was slumped over toward the front  
15 Toward the windshield or toward the steering wheel?  
16 **A. Steering wheel.**  
17 Q. All right. So slumped over toward steering  
18 wheel?  
19 **A. Mm-hmm.**  
20 Q. Is that -- is that what you remember seeing?  
21 **A. Mm-hmm.**  
22 Q. And you're under oath now. So don't let me put  
23 words in your mouth. If I got something wrong, you tell  
24 me.

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1 **A. All right.**  
2 Q. Because we work just with the truth. Just  
3 whatever the facts are. That's all I can work with.  
4 MR. PARKINS: Objection.  
5 MS. SULTON: Withdrawn. That wasn't a  
6 question.  
7 BY MS. SULTON:  
8 Q. All right. So at the point that you first saw  
9 Mr. Smith slumped over toward the steering wheel, were  
10 the police officers still firing their guns?  
11 **A. Yes.**  
12 Q. Where were the police officers? Were they  
13 behind the car? On the side of the car? In front of the  
14 car? Where were the police officers?  
15 **A. Behind the car.**  
16 Q. Behind the car.  
17 How long after that, if you can recall, did  
18 the car come to a stop?  
19 **A. From the time it started shooting?**  
20 Q. No. From -- I'm sorry. The question was poorly  
21 framed.  
22 From the time that you first noticed him  
23 slumped over toward the steering wheel to the time that  
24 the car stopped, how much time do you think passed?

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1 **A. That's hard to --**  
2 Q. Just a moment? A half an hour? Seconds?  
3 **A. It couldn't have been no half an hour. That's**  
4 **for sure. If -- I -- I would say -- I would say within**  
5 **seconds. I can't say.**  
6 Q. Okay.  
7 **A. I can't say ten seconds, 15 seconds, nothing**  
8 **like that. But it wasn't -- if wasn't long.**  
9 Q. Okay. Between the time that you first noticed  
10 Mr. Smith slumped over toward the steering wheel and the  
11 car came to a stop, were the officers still firing their  
12 weapons?  
13 **A. Say that again.**  
14 Q. Okay. Between the time that you first noticed  
15 Mr. Smith slumped over toward the steering wheel and the  
16 time that the car stopped, were the officers still firing  
17 their weapons?  
18 **A. Yes.**  
19 Q. After that car came to a stop, were the officers  
20 still firing their weapons?  
21 **A. Yes.**  
22 Q. Were they behind the car? On the side of the  
23 car? In front of the car? Where were the officers?  
24 After that car stopped and they were still firing their

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1 weapons, where were those officers?  
2 **A. At no time did I see them in front of the car.**  
3 **At no time.**  
4 Q. When that car first stopped, the officers were  
5 still firing their weapons; correct?  
6 **A. Yes.**  
7 Q. Where were those officers? Were they behind the  
8 car?  
9 **A. They was in the back of the car.**  
10 Q. All right. They were in the back of the car?  
11 **A. Mm-hmm.**  
12 Q. Was Mr. Smith slumped over the steering wheel at  
13 the time that that car was stopped? When you first  
14 noticed that car stopped, was Mr. Smith still slumped  
15 over or toward the steering wheel?  
16 **A. Yes.**  
17 Q. And were those officers still shooting?  
18 **A. Yes.**  
19 MS. SULTON: Nothing further.  
20 MR. PARKINS: No redirect  
21 (Discussion off the record.)  
22 MR. PARKINS: Do you want to go off the  
23 record?  
24 MS. SULTON: I was going to make a quip.

Page 62		Page 64	
1	Counsel, I'm sure you have a color copier in this office	1	
2	good enough to pick that up.	2	
3	MR. PARKINS: Well, I don't think we do.	3	
4	That's why --	4	
5	MS. SULTON: But if we don't, you are more	5	
6	than welcome to hang on --	6	
7	MR. PARKINS: Thank you. I will.	7	
8	MS. SULTON: To it. And just mark for the	8	REPLACE THIS PAGE
9	record that Deposition Exhibit Number 4, the original	9	
10	copy here, will be in the safekeeping of counsel for the	10	WITH THE ERRATA SHEET
11	defense.	11	
12	MR. PARKINS: Okay.	12	AFTER IT HAS BEEN
13	THE VIDEOGRAPHER: Going off the record at	13	
14	12:11 p.m.	14	COMPLETED AND SIGNED
15	(The deposition was then concluded at	15	
16	12:11 p.m.)	16	BY THE DEPONENT.
17	-----	17	
18		18	
19		19	
20		20	
21		21	
22		22	
23		23	
24		24	
Page 63		Page 65	
1	INDEX TO TESTIMONY	1	State of Delaware )
2		2	)
3		3	New Castle County )
4	DAVID NATHANIEL GWYN	4	
5	Examination by Mr. Parkins	5	CERTIFICATE OF REPORTER
6	Examination by Ms. Sulton	6	
7	-----	7	I, Kathleen White Palmer, Registered Merit
8		8	Reporter and Notary Public, do hereby certify that there
9	INDEX TO EXHIBITS	9	came before me on the 24th day of August, 2005, the
10	GWYN EXHIBIT NO.:	10	deponent herein, DAVID NATHANIEL GWYN, who was duly sworn
11		11	by me and thereafter examined by counsel for the
12	1 A four-page copy of the Filing Original Copy	12	respective parties; that the questions asked of said
13	of Affidavit of David Gwyn document	13	deponent and the answers given were taken down by me in
14	2 A two-page copy of a News Journal article	14	Stenotype notes and thereafter transcribed into
15	3 A drawing	15	typewriting under my direction.
16	4 A drawing	16	I further certify that the foregoing is a
17	-----	17	true and correct transcript of the testimony given at
18		18	said examination of said witness.
19		19	I further certify that I am not counsel,
20		20	attorney, or relative of either party, or otherwise
21		21	interested in the event of this suit.
22		22	
23		23	
24		24	

17 (Pages 62 to 65)

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

HARRY SMITH, JR. and ROSLYN )  
WOODARD SMITH, individually and )  
as Administrators of the ESTATE )  
OF HARRY SMITH, III, )

Plaintiffs, )

v. )

CITY OF WILMINGTON, JOHN )  
CIRITELLA, THOMAS DEMPSEY and )  
MATTHEW KURTEN, )

Defendants. )

Civil Action  
No. 04-1254-GMS

Deposition of JENNIE VERSHVOVSKY, M.D.  
taken pursuant to notice at the law offices of  
Richards, Layton & Finger, One Rodney Square, Third  
Floor, Wilmington, Delaware, beginning at 2:10 p.m. on  
Tuesday, May 30, 2006, before Kurt A. Fetzer,  
Registered Diplomate Reporter and Notary Public.

APPEARANCES:

ANNE T. SULTON, ESQ. (Via teleconference)  
SULTON LAW OFFICES  
Post Office Box 2763  
Olympia, Washington 98507  
For the Plaintiffs

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1 APPEARANCES: (Cont'd)

2 JOHN A. PARKINS, JR., ESQ.  
3 RICHARDS LAYTON & FINGER  
4 One Rodney Square - Third Floor  
5 Wilmington, Delaware 19801  
6 - and -  
7 ROSAMARIA TASSONE, ESQ.  
8 CITY OF WILMINGTON LAW DEPARTMENT  
9 City/County Building - 9th Floor  
10 Wilmington, Delaware 19801  
11 For the Defendants  
12

13 - - - - -

14 JENNIE VERSHOVSKY, M.D.,  
15 the deponent herein, having first been  
16 duly sworn on oath, was examined and  
17 testified as follows:

18 EXAMINATION

19 BY MR. PARKINS:

20 Q. Dr. Vershovsky, I'm about to ask you a series  
21 of questions concerning an autopsy that you performed  
22 on or about September 14th, 2003 on Harry J. Smith,  
23 III.

24 I'm afraid that I am not well-versed in  
medical technology -- excuse me -- in medical parlance  
so I may misspeak. And if I ask you anything which is  
unclear to you, please don't hesitate to tell me that  
and I will attempt to rephrase my question.

A. Okay.



1       midline.

2           Q.     So if we're looking at somebody from head on,  
3       it would sort of be a line that would run from the  
4       nose let's say up over the top of the head in the  
5       middle and down the back of the head?

6           A.     And it would go like down the spine, so this  
7       would be the posterior midline.

8           Q.     In this particular instance the bullet was, the  
9       entrance wound was about 4-3/4 inches from the  
10      posterior midline. Am I correct?

11          A.     Yes.

12          Q.     The bullet was found inside Mr. Smith's brain,  
13      was it not?

14          A.     Yes.

15          Q.     Is it unusual for a 40 caliber bullet to enter  
16      the side of a head and not exit the other side?

17          A.     It depends. Bullets have no rules.

18          Q.     You found no significance to that?

19          A.     No.

20          Q.     Did you trace the path of the bullet once it  
21      entered his head?

22          A.     Yes.

23          Q.     Now, am I correct then it entered, that the  
24      first part of the brain which it made contact with was



1 (indicating), and occipital is in this area. So it  
2 was on the margin of the parietal and occipital, so  
3 it's very slightly backward.

4 That's what I indicate in my report.

5 Q. I am going to show you if I could a schematic  
6 of a brain. This won't work.

7 It's a coronal view, a coronal section,  
8 but that won't help us.

9 A. This will help (indicating).

10 Q. All right.

11 A. So if we're looking at this diagram, this  
12 (indicating) is the back or posterior side of the  
13 brain. This is anterior part of the brain.

14 Q. Yes.

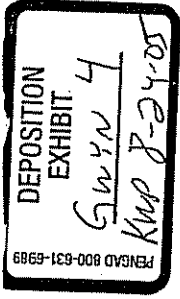
15 A. So this is frontal lobe, this (indicating)  
16 area. And the mid is parietal. At the very back is  
17 occipital. The temporal is kind of on the inferior  
18 surface of the brain. And that cerebellum is this  
19 area (indicating).

20 Q. In the --

21 A. And the brainstem we can't see because it's  
22 kind of hidden here (indicating).

23 So where we recovered the bullet it was,  
24 if you can look here, this is the occipital area and







**In the Matter Of:**

**Estate of Harry Smith, III, et al.**

**V.**

**Wilmington Police Department**

**C.A. # 04-1254 (GMS)**

---

**Transcript of:**

**John F. Ciritella**

**May 8, 2006**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ESTATE OF HARRY SMITH, III, )  
HARRY SMITH, JR., and ROSLYN )  
WOODARD SMITH, )  
 )  
Plaintiffs, )  
 ) Civil Action  
v. ) No. 04-1254  
 ) (GMS)  
WILMINGTON POLICE DEPARTMENT, )  
MICHAEL SZCZERBA and ONE OR )  
MORE JOHN DOES, )  
 )  
Defendants. )

Deposition of JOHN F. CIRITELLA taken  
pursuant to notice at the law offices of Richards,  
Layton & Finger, One Rodney Square, Third Floor,  
Wilmington, Delaware, beginning at 10:00 a.m. on  
Monday, May 8, 2006, before Kathleen White Palmer,  
Registered Professional Reporter and Notary Public.  
APPEARANCES:

ANNE T. SULTON, PH.D., ESQUIRE  
P.O. Box 2763  
Olympia, Washington 98507  
for the Plaintiffs

JOHN A. PARKINS, JR., ESQUIRE  
K. TYLER O'CONNELL, ESQUIRE  
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Department and Michael Szczerba

-----  
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1 ALSO PRESENT:  
2  
3 THOMAS CLIFTON DEMPSEY  
4 MATTHEW WAYNE KURTEN  
5  
6 JOHN F. CIRITELLA,  
7 the witness herein, having first been  
8 duly sworn on oath, was examined and  
9 testified as follows:  
10 BY MS. SULTON:  
11 Q. Would you state your name and spell your last  
12 name for the record, please?  
13 A. First name is John, J-o-h-n, middle initial F,  
14 last name is Ciritella, C-i-r-i-t-e-l-l-a.  
15 Q. Have you ever given a deposition before?  
16 A. Yes, I have.  
17 Q. On how many occasions have you so done?  
18 A. Maybe two.  
19 Q. What cases were those?  
20 A. Accidents, traffic accidents.  
21 Q. Have you ever been sued before?  
22 A. I don't believe so.  
23 Q. Have you ever filed a lawsuit against anyone?  
24 A. Have I? No.  
Q. Have you ever had any complaints filed against

Page 3

1 you by citizens other than this current lawsuit?  
2 A. I believe so, yes.  
3 Q. Can you tell me about those complaints?  
4 A. It was just one incident. It was a use of  
5 force and it was -- never went to court.  
6 Q. When was that use-of-force complaint filed?  
7 A. I can't tell you. It's been awhile. At least  
8 ten years ago.  
9 Q. Were you a member of the Wilmington Police  
10 Department at that time?  
11 A. I was, yes.  
12 Q. Do you recall the name of the citizen who  
13 complained?  
14 A. No, I do not.  
15 Q. Did the citizen file a lawsuit?  
16 A. I believe he did, yes.  
17 Q. Do you know where that lawsuit was filed?  
18 A. Federal court.  
19 Q. Here in Wilmington?  
20 A. That's correct.  
21 Q. Do you know what happened to that lawsuit?  
22 A. I believe it was dropped. Never came to court.  
23 It was unsubstantiated, I guess.  
24 Q. So it was dismissed by the court?

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1 A. Again, I know I didn't have to show up and it  
2 was dropped, so I'm not sure the exact reasons for it.  
3 Q. Was your deposition taken in that case?  
4 A. I don't believe so.  
5 Q. How long have you been a police officer?  
6 A. Nineteen plus years.  
7 Q. All with the Wilmington Police Department?  
8 A. That's correct.  
9 Q. When was the last time you received training in  
10 the area of the use of force?  
11 A. Probably maybe last year when I received my  
12 Taser training was my last use of force -- it  
13 coincided with the use of force.  
14 Q. Can you tell me about that training?  
15 A. A member of the SWAT team, SWAT team members  
16 were issued maybe 15 to 20 Tasers for a -- I guess  
17 it's just a pilot program and through that we were  
18 issued the Tasers, some guys in the patrol division,  
19 some guys in detective where I'm assigned were issued  
20 the Tasers and through that we go through some  
21 use-of-force policy.  
22 Q. The training was specifically designed to  
23 familiarize you with the Taser instrument itself?  
24 A. Yeah, the majority of that training was, yes.

Page 5

1 Q. Are you using the type of Taser that shoots out  
2 darts?  
3 A. That's correct.  
4 Q. That are extended by wires?  
5 A. That's correct.  
6 Q. The Taser that you are using, how long are the  
7 wires on that one?  
8 A. I believe mine is 21 feet.  
9 Q. As a part of your training in the Taser that  
10 covered the use of force, can you tell me about the  
11 training you received? Other than the actual  
12 manipulation of the Taser instrument, can you tell me  
13 about the use-of-force training you received?  
14 A. It was just, I think, pretty much just going  
15 over our use-of-force policy through the City of  
16 Wilmington, our police department and what guidelines,  
17 where does it fit in the, I guess, use-of-force  
18 ladder, so to speak, when and when not to use it, what  
19 we can use it against, different incidents, when it  
20 can be deployed.  
21 Q. Do you use a use-of-force ladder or a  
22 use-of-force continuum?  
23 A. I guess -- continuum, I guess, would be a  
24 better word for it.

2 (Pages 2 to 5)

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1 requested.)  
2 **A. We have a use-of-force policy. I think it's,**  
3 **you know, maybe ten plus pages. And again, it goes**  
4 **over each piece of equipment that you're given or**  
5 **assigned and it goes over times that, I guess, when**  
6 **you can deploy it. It gives examples of when you can**  
7 **and cannot use that equipment.**  
8 **BY MS. SULTON:**  
9 Q. Correct me if I'm wrong. So there's a  
10 use-of-force policy in Wilmington that says this is  
11 when you can use a baton?  
12 **A. Can and cannot use a baton.**  
13 Q. There's a policy that says this is when you can  
14 or cannot use a gun?  
15 **A. That's correct.**  
16 Q. Tell me about what the policy says as it  
17 relates to when you can and cannot use a gun.  
18 **A. I'm sorry. What was the last part? Can and**  
19 **cannot use --**  
20 Q. A gun.  
21 **A. A gun? You can't fire warning shots. That's a**  
22 **cannot. You can if you feel there's a substantial**  
23 **risk of death to me, citizens of Wilmington, possibly**  
24 **a partner.**

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1 Q. Do you have a policy that says you can shot at  
2 a moving vehicle?  
3 **A. I believe the policy, I'm not exactly sure what**  
4 **it says on verbatim, whether to shoot or not shoot at**  
5 **a moving vehicle.**  
6 Q. How were you trained?  
7 **A. How was I trained?**  
8 Q. Yes.  
9 **A. In --**  
10 Q. How were you trained as it relates to whether  
11 you can or cannot shot at a moving vehicle?  
12 **A. I think if there's a threat there, you can**  
13 **shot. If you feel that your life is in danger, you**  
14 **can shot.**  
15 Q. Is there a policy that specifically addresses  
16 when you should or should not or cannot or can shot at  
17 a moving vehicle?  
18 **A. I don't know that verbatim, no. I don't know**  
19 **that, so I can't answer that.**  
20 Q. So based on your 19 years experience, you're  
21 not certain as you sit here today whether there is a  
22 specific policy on shooting at moving vehicles?  
23 **A. No, I'm not sure.**  
24 Q. Do you recall at any point during your 19 years

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1 of service receiving any training that specifically  
2 addressed shooting or not shooting at a moving  
3 vehicle?  
4 **A. It's been addressed shooting or not shooting at**  
5 **a moving vehicle, yes.**  
6 Q. What did they tell you you should or should not  
7 do?  
8 **A. Again, through most of, I guess, the last, I**  
9 **guess, recent -- I think it was maybe an in-service**  
10 **training, I'm not sure of the date, it might be within**  
11 **the last five years, we covered certain types of**  
12 **incidents that would cover that, moving or not --**  
13 **shooting or not shooting at a vehicle.**  
14 **And again, all it is is, again, it really**  
15 **comes down to the determination of that officer that's**  
16 **present at the scene at the time of that incident. It**  
17 **doesn't necessarily say that you can or cannot shot.**  
18 **If you feel your life is in danger, then if that**  
19 **officer feels he has to shot, then that's his**  
20 **judgment.**  
21 Q. So the training that you receive at some point  
22 within the last five years as it related to shooting  
23 at a moving vehicle did not provide you with a  
24 guideline as to when you do shot or don't shot?

Page 13

1 **A. I'm not saying that. There may be a guideline.**  
2 **I just don't know verbatim.**  
3 Q. Do you recall the name of your instructor for  
4 that course or class that you took that covered the  
5 issue of when you should or should not shot at a  
6 moving vehicle?  
7 **A. That I don't know.**  
8 Q. Would it be in your personnel file the  
9 use-of-force training that you've completed in, say,  
10 the last ten years?  
11 **A. Could be.**  
12 Q. If I were to look in your personnel file, would  
13 it tell me who the instructors are for the various  
14 courses that you've completed for the department in,  
15 say, the last ten years?  
16 **A. I believe it should.**  
17 Q. Did you ever receive any training on how to  
18 deal with people who are mentally challenged?  
19 **A. In my 19 plus years? I believe I've had some**  
20 **training in it, yes.**  
21 Q. Can you tell me what kind of training you've  
22 received in, say, the last five years?  
23 **A. Five years? I don't think any.**  
24 Q. Well, tell me what training you have received

4 (Pages 10 to 13)

Page 26

1 Q. When I say "whole week," 40 hours of time?  
2 A. Yes, ma'am.  
3 Q. Just learning how to use that particular  
4 weapon?  
5 A. Yes, ma'am.  
6 Q. I assume that the instruction that you received  
7 concerned not just use of it, but how to clean it and  
8 so forth; correct?  
9 A. Yes, ma'am.  
10 Q. Every day of that week did you go down to the  
11 range and discharge the weapon?  
12 A. I believe so, yes.  
13 Q. You were qualified with that weapon; correct?  
14 A. That's correct.  
15 Q. Between the time that you first became  
16 qualified with that weapon, I assume they gave you  
17 some certificate or something indicating that you are  
18 qualified with the new weapon; is that correct?  
19 A. I don't know how that's handled. I mean,  
20 again, if it were just qualified, I guess that's kept  
21 through our human resources, so no one told you you  
22 weren't qualified.  
23 A. That's correct.  
24 Q. From the time that you began carrying that

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1 weapon and up until September 13, 2003, had you ever  
2 discharged that weapon at another person?  
3 A. No, ma'am.  
4 Q. Prior to September 13, 2003, had you ever shot  
5 anybody?  
6 A. No, ma'am.  
7 Q. So this was your first shooting incident, that  
8 of Harry Smith?  
9 A. That's correct.  
10 Q. So in the 19 years you've been on the force  
11 here in Wilmington, you've only had one shooting  
12 incident?  
13 A. That's correct.  
14 Q. Never shot at a dog or anything?  
15 A. No, ma'am.  
16 Q. Tell me what happened on September 13, 2003, as  
17 best you can recall.  
18 A. As best I can recall?  
19 Q. Yes.  
20 A. I was working an on-call weekend, which meant I  
21 was in detectives at the time, plain clothes  
22 assignment working. I guess it would be 1600 to 2400,  
23 4 p.m. till 12 midnight. Sitting at my desk typing a  
24 report. I heard a call for assistance.

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1 Q. So let me stop you there for just a second.  
2 And I'll stop you from time to time, so I will  
3 appreciate your indulgence as I do that.  
4 So you're in the police station?  
5 A. That's correct. Detective division.  
6 Q. When were you promoted to detective?  
7 A. It's not a promotion. It's just a transfer.  
8 Q. So what is your rank?  
9 A. Master corporal.  
10 Q. Master corporal. But you were working in plain  
11 clothes --  
12 A. As a detective.  
13 Q. -- on September 13, 2003?  
14 A. That's correct.  
15 Q. You're writing a report; correct?  
16 A. Typing a report.  
17 Q. You hear a call come in; correct?  
18 A. A call for assistance come across our radio.  
19 Q. What do you recall the call for assistance  
20 saying? What was the content of that?  
21 A. Well, the content was that it appeared that one  
22 of the officers was, I guess, yelling or screaming on  
23 the radio. Could not make it out. What I could tell,  
24 it was not your normal conversation over the radio,

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1 meaning that in my years of experience, I could tell  
2 that something was going on. Heard that chatter.  
3 Then I heard they need another car or need assistance  
4 and they were able to give, I believe, a location  
5 somewhere on Washington Street.  
6 At that particular time I exited my desk.  
7 I have to go down other steps, I guess, floor to where  
8 my vehicle is. And as I exited the, I guess, the  
9 police department, I heard that again, another call  
10 for assistance. Shots fired. Police car taken.  
11 Q. It's just those words, call for assistance,  
12 shot fired, car taken?  
13 A. They were the strongest words I heard.  
14 Q. So there may have been other words stated?  
15 A. There may have been.  
16 Q. Your car is an unmarked police car?  
17 A. That's correct.  
18 Q. So you're in civilian clothes and getting into  
19 an unmarked police car; correct?  
20 A. That's correct.  
21 Q. Did you have any lights or sirens in that  
22 unmarked car?  
23 A. Yes, I did.  
24 Q. So you get into your car. Then what do you do?

8 (Pages 26 to 29)



**In the Matter Of:**

**Estate of Harry Smith, III, et al.**

**V.**

**Wilmington Police Department**

**C.A. # 04-1254 (GMS)**

---

**Transcript of:**

**Matthew W. Kurten**

**May 10, 2006**

---

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Matthew W. Kurten

v.  
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Wilmington Police Department  
May 10, 2006

Page 1

IN THE UNITED STATES DISTRICT COURT  
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ESTATE OF HARRY SMITH, III,	)	
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	)	
Plaintiffs,	)	
	)	Civil Action
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	)	(GMS)
WILMINGTON POLICE DEPARTMENT,	)	
MICHAEL SZCZERBA and ONE OR	)	
MORE JOHN DOES,	)	
	)	
Defendants.	)	

Deposition of MATTHEW W. KURTEN taken pursuant to notice at the law offices of Richards, Layton & Finger, One Rodney Square, Third Floor, Wilmington, Delaware, beginning at 10:00 a.m. on Wednesday, May 10, 2006, before Kathleen White Palmer, Registered Professional Reporter and Notary Public.  
APPEARANCES:

ANNE T. SULTON, PH.D., ESQUIRE  
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Department and Michael Szczerba

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Estate of Harry Smith, III, et al.  
Matthew W. Kurten

v.  
C.A. # 04-1254 (GMS)

Wilmington Police Department  
May 10, 2006

Page 2

1 APPEARANCES:  
2 ROSAMARIA TASSONE, ESQUIRE  
3 CITY OF WILMINGTON LAW DEPARTMENT  
4 City/County Building - 9th Floor  
5 Wilmington, Delaware 19801-3537  
6 for the Defendants  
7 -----  
8 MATTHEW W. KURTEN,  
9 the witness herein, having first been  
10 duly sworn on oath, was examined and  
11 testified as follows:  
12 BY MS. SULTON:  
13 Q. Would you be kind enough to spell your first  
14 and last name for the record, please?  
15 A. **Sure. First name is Matthew, M-a-t-t-h-e-w,**  
16 **last name is Kurten, K-u-r-t-e-n.**  
17 Q. Your first name is misspelled on the complaint.  
18 You are the same Matthew Kurten that is spelled as  
19 M-a-t-t-h-e-w; correct?  
20 A. **I believe so.**  
21 Q. Before I ask you a question --  
22 MS. SULTON: Let me just put on the record  
23 that I did receive this morning -- and thank you,  
24 John -- the videotape of Harry Smith and the letter  
concerning Sergeant Dempsey's former complaints  
indicating that those are routinely purged from an

Page 3

1 officer's file after five years.  
2 MR. PARKINS: Well, not complaints, but  
3 unsubstantiated complaints.  
4 MS. SULTON: Okay. Thank you. That helps  
5 to clear the discussion from his deposition. I  
6 appreciate that.  
7 BY MS. SULTON:  
8 Q. How long have you been a police officer,  
9 Mr. Kurten?  
10 A. **Almost seven years. This June will be seven**  
11 **years.**  
12 Q. What is your current rank?  
13 A. **I'm sergeant.**  
14 Q. What was your rank on September 13, 2003?  
15 A. **Corporal.**  
16 Q. Prior to or since the incident on September 13,  
17 2003, have you ever been involved in a shooting  
18 incident?  
19 A. **No.**  
20 Q. Have you ever discharged your weapon as a  
21 police officer outside of practicing at a range or  
22 qualifying with the use of your weapon?  
23 A. **No.**  
24 Q. Have you ever had any complaints filed against

Page 4

1 you ever?  
2 A. **There may have been some filed, yes.**  
3 Q. When?  
4 A. **I couldn't give you the exact dates. There's**  
5 **only one substantiated complaint in my file.**  
6 Q. Can you tell me about that, please?  
7 A. **It's for failing to do a prearrest felony**  
8 **intake.**  
9 Q. What does that mean?  
10 A. **I did not do a felony intake on somebody who I**  
11 **had assigned felony charges for, signed warrants for.**  
12 Q. That was in connection with your job as a  
13 Wilmington police officer?  
14 A. **That's correct.**  
15 Q. Have you ever had anyone file any complaints  
16 about you ever, whether or not you were a police  
17 officer?  
18 A. **They may have spoke with somebody. As far as**  
19 **formal complaints, no, not to my knowledge.**  
20 Q. Are you aware of any informal complaints?  
21 A. **Again, if somebody had spoken with the**  
22 **supervisor in an informal fashion and everything was**  
23 **taken care of, if there was something that they didn't**  
24 **like or whatnot, then that would have been handled. I**

Page 5

1 **couldn't say for sure if I would have been made aware**  
2 **of that.**  
3 Q. When did you go through the police training  
4 academy in connection with your job with the  
5 Wilmington Police Department?  
6 A. **Started June 14th, 1999.**  
7 Q. Were you given a psychological test before or  
8 as a part of your academy?  
9 A. **Yes. It's a prerequisite.**  
10 Q. Do you have a college degree?  
11 A. **Yes, ma'am.**  
12 Q. From where?  
13 A. **University of Delaware.**  
14 Q. What was your major?  
15 A. **Criminal justice.**  
16 Q. You graduated in what year?  
17 A. **1995.**  
18 Q. Prior to joining the Wilmington Police  
19 Department, how were you employed?  
20 A. **I did two years as a probation and parole**  
21 **officer for State of Delaware.**  
22 Q. Prior to that, how were you employed?  
23 A. **My father had his own business. I worked for**  
24 **him.**

2 (Pages 2 to 5)

Estate of Harry Smith, III, et al.  
Matthew W. Kurten

v.  
C.A. # 04-1254 (GMS)

Wilmington Police Department  
May 10, 2006

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1 Q. What kind of business was it?  
2 A. **Wallpapering and painting and the like.**  
3 Q. I would like to talk with you about your  
4 training, both in the academy and since.  
5 Did you receive use-of-force training  
6 during the academy?  
7 A. **Yes.**  
8 Q. What kind of training did you receive?  
9 A. **Use-of-force training would be as far as one of**  
10 **our directives in the Wilmington police officer's**  
11 **manual, directive 6.7, governs our use of force as**  
12 **Wilmington police officers. Also defensive tactics.**  
13 **I believe they go hand in hand. Defensive tactics**  
14 **course.**  
15 Q. What did they teach you about use of force?  
16 A. **Basically there's guidelines as far as --**  
17 **there's use-of-force continuum and they went through**  
18 **the different steps and when to escalate, de-escalate**  
19 **the best you can. Use the minimum force necessary to**  
20 **effect an arrest.**  
21 Q. As a part of your training on the use of deadly  
22 force, in particular, what were you taught were the  
23 guidelines you should follow?  
24 A. **There are certain criteria to be followed to**

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1 **use deadly -- when to use deadly force.**  
2 **For instance, if my life was in danger,**  
3 **another officer, another citizen, if there was a**  
4 **fleeing felon who was armed and we believed there**  
5 **would be a great harm or danger to the public.**  
6 Q. Any other guidelines that you recall being  
7 taught either in the police training academy or  
8 subsequent thereto?  
9 A. **I believe those are the standard ones, the main**  
10 **ones.**  
11 Q. What other criteria are you to consider before  
12 using deadly force based upon your training?  
13 A. **What type of deadly force are you referring to?**  
14 Q. Use of the service weapon, gun, shotgun,  
15 handgun.  
16 A. **Certainly you need to be aware of what's in**  
17 **your surrounding area, what's in your backdrop. For**  
18 **example, children, if there's children playing in a**  
19 **playground, you certainly don't want to discharge your**  
20 **weapon for fear of accidentally striking one of them.**  
21 **So...**  
22 Q. Any other guidelines?  
23 A. **Certainly you wouldn't take -- you want to take**  
24 **your lighting into account. You want to make sure you**

Page 8

1 **have your intended target in your line of fire as**  
2 **intended, so -- weather is -- there's certainly a**  
3 **whole bunch -- whole bunch of things to take into**  
4 **account.**  
5 Q. Anything else you should take into account  
6 based upon your training? And take your time as you  
7 reflect on that question, please.  
8 A. **Sure. You just have to, I guess, have a good**  
9 **faith and reason to believe that deadly force is**  
10 **necessary.**  
11 Q. Anything else that you should consider based on  
12 your training?  
13 A. **Not off the top of my head.**  
14 Q. On or before September 13, 2003, did you  
15 supervise any other officers?  
16 A. **No.**  
17 Q. Who was your supervisor?  
18 A. **Ronald Fioravanti. I can spell the last.**  
19 **F-i-o-r-a-v-a-n-t-i.**  
20 Q. Do you recall the names of any of the people  
21 who served as your training officers either in the  
22 academy or subsequent thereto?  
23 A. **I'm sure there's a multitude of people. Any**  
24 **specific courses or --**

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1 Q. Yes. And thank you for focusing the question.  
2 As it relates to use of force, deadly force, in  
3 particular.  
4 A. **No, not who taught that particular agenda for**  
5 **use of deadly force. I know the range master, which**  
6 **is still as of this date, is Sergeant Scott Sowden.**  
7 **So he would have to do as far as application of the**  
8 **firearms, usage of firearms down at the range. But as**  
9 **far as who taught directive 6.7, no.**  
10 Q. I'd like to focus your attention on  
11 September 13, 2003. What kind of handgun were you  
12 carrying at that time?  
13 A. **Smith & Wesson 40-caliber semiautomatic.**  
14 Q. That holds 13 bullets, 12 in the clip and one  
15 in the chamber?  
16 A. **Yes.**  
17 Q. How many shots did you discharge from your  
18 weapon on that day?  
19 A. **Five, I believe.**  
20 Q. Why did you discharge those five bullets from  
21 your weapon?  
22 A. **I was in fear that Detective Ciritella would be**  
23 **injured and/or killed, seriously injured and/or**  
24 **killed.**

3 (Pages 6 to 9)

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1 A. As part of our basic officer's course in the  
2 police academy, there's, I believe -- I'm not sure if  
3 it's defensive driving or a pursuit driving course  
4 where we actually physically go out and try the  
5 vehicles and maneuver. So if that's what you're  
6 looking for, yes. Other than that, I can't say that I  
7 have.  
8 Q. Have you received any training in shooting at  
9 moving vehicles?  
10 A. No.  
11 Q. Have you ever received any guidelines,  
12 directives, or policy statements or any kind of  
13 training whatsoever as it relates to whether or not  
14 you should or should not shoot at a moving vehicle?  
15 A. I don't think should or should not -- to answer  
16 your question, no, in that terminology, should or  
17 should not.  
18 Q. Have you ever received any guidance at all in  
19 terms of whether you should or should not shoot at a  
20 moving vehicle?  
21 MR. PARKINS: It's been asked and answered.  
22 You can answer again.  
23 A. Certainly shooting at a motor vehicle, no.  
24 There is a section with our pursuit policy and

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1 use-of-force policy as far as exigent circumstances.  
2 Q. What is your understanding of what you should  
3 or should not do as it relates to moving at a shooting  
4 vehicle?  
5 A. Moving at a shooting vehicle?  
6 Q. Yes. Shooting at a moving vehicle.  
7 A. I don't think -- there's nothing in black and  
8 white saying that. Certainly if a threat is  
9 perceived, as I mentioned before, to myself and  
10 another officer, citizen, then certainly exigent  
11 circumstances allow or permit for the use of deadly  
12 force.  
13 Q. That includes shooting at a moving vehicle?  
14 A. That would certainly include it.  
15 Q. Have you received any training in reference to  
16 using your -- well, let me ask the question this way  
17 first: When you parked your car at the intersection  
18 of 5th and Harrison, why did you park it in the  
19 fashion that you did as depicted in the photograph we  
20 previously marked?  
21 A. In the best interest of public safety.  
22 Q. Tell me: What do you mean by that?  
23 A. At that point, in that certain block, if we  
24 could end this pursuit, end this matter, hopefully in

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1 a peaceful manner, by my parking the vehicle there,  
2 then I believe the exigent circumstances existed and I  
3 was just in doing so.  
4 Q. I'm sorry. I'm not being clear in my question.  
5 Let me try again.  
6 A. Okay.  
7 Q. Did you park your vehicle in that manner  
8 because you were using it as a blockade or barricade  
9 to stop the progression of the stolen vehicle up  
10 5th Street?  
11 A. Certainly that was my hope so no other lives of  
12 citizens would be in danger.  
13 Q. So you were using your vehicle as a barricade;  
14 correct?  
15 A. Yes. I guess you could say that.  
16 Q. Have you received any training that says you  
17 should use your police vehicle as a barricade in a car  
18 pursuit or car chase situation?  
19 A. Again, I can't say that happened, but certainly  
20 my discretion, I believe it was warranted.  
21 Q. Is there anything in your policy manual that  
22 authorizes you to use your police vehicle as a  
23 blockade or barricade in a car chase situation?  
24 A. I'm not 100 percent sure if there is or is not

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1 at this point in time.  
2 Q. Were you dressed in your uniform on  
3 September 13, 2003?  
4 A. Actually, I was in a bicycle uniform, but, yes,  
5 it was marked with Wilmington police decals and had a  
6 badge on it, yes.  
7 Q. Have you ever received any training as it  
8 relates to shooting at moving targets or at targets  
9 that are moving?  
10 A. I want to say that I have at probation and  
11 parole some type of device or some type of object that  
12 they had fixed that would move on you or flip a turn.  
13 And also doing shoot or no shoot, which is a simulated  
14 shooting where you would decipher between your --  
15 between your targets whether to shoot or not shoot,  
16 and certainly they would be moving at the time.  
17 Q. Was that a video simulation --  
18 A. Yes.  
19 Q. -- shooting sideways --  
20 A. That would be.  
21 Q. -- where you go into a room and they put a  
22 video up and they show you a film and you're standing  
23 there with either real or looks real handgun and they  
24 have people pop up and you are kind of trained whether

14 (Pages 50 to 53)



**In the Matter Of:**

**Estate of Harry Smith, III, et al.**

**v.**

**Wilmington Police Department**

**C.A. # 04-1254 (GMS)**

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**Transcript of:**

**Thomas Clifton Dempsey**

**May 9, 2006**

---

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SA30

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ESTATE OF HARRY SMITH, III,	)	
HARRY SMITH, JR., and ROSLYN	)	
WOODARD SMITH,	)	
	)	
Plaintiffs,	)	
	)	Civil Action
v.	)	No. 04-1254
	)	(GMS)
WILMINGTON POLICE DEPARTMENT,	)	
MICHAEL SZCZERBA and ONE OR	)	
MORE JOHN DOES,	)	
	)	
Defendants.	)	

Deposition of THOMAS CLIFTON DEMPSEY taken pursuant to notice at the law offices of Richards, Layton & Finger, One Rodney Square, Third Floor, Wilmington, Delaware, beginning at 10:00 a.m. on Tuesday, May 9, 2006, before Kathleen White Palmer, Registered Professional Reporter and Notary Public.  
APPEARANCES:

ANNE T. SULTON, PH.D., ESQUIRE  
P.O. Box 2763  
Olympia, Washington 98507  
for the Plaintiffs

JOHN A. PARKINS, JR., ESQUIRE  
K. TYLER O'CONNELL, ESQUIRE  
RICHARDS, LAYTON & FINGER

One Rodney Square - Third Floor  
Wilmington, Delaware 19899  
for the Defendants Wilmington Police  
Department and Michael Szczerba

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1 not.  
2 **BY MS. SULTON:**  
3 Q. Did you receive anything subsequent to the  
4 academy?  
5 **A. We continue to update our policies and**  
6 **procedures, and all I can say is that when we do that,**  
7 **that's when we are trained on the additions or, you**  
8 **know, whatever the updating is. And other than that,**  
9 **no, I can't recall any other type of training.**  
10 Q. Did you ever receive any training in how to  
11 recognize and to deal with people who may be suffering  
12 from mental illnesses?  
13 **A. Again, in the academy we have individuals that**  
14 **come in from either crisis management, mental illness**  
15 **facilities, and they will discuss different mental**  
16 **illnesses, stuff of that nature, but they do not go**  
17 **great in-depth to them. It's basically just to give**  
18 **us an overview on what may be out there and what to**  
19 **look for when we do, you know, meet up with these**  
20 **individuals. And maybe how to, you know, talk to**  
21 **them. But it's not extensive in any way.**  
22 **We basically -- the main thing that we are**  
23 **trained in when it comes to, you know, trying to**  
24 **identify what the problem is is: Is the person in**

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1 **danger of themselves or endangering someone else?**  
2 **That's what we, as police officers, look for. That's**  
3 **what we mainly are trained for.**  
4 **We are not trained to identify what a**  
5 **mental illness -- what the mental illness is if the**  
6 **person is mentally ill. The person could be, you**  
7 **know, intoxicated or something of that nature. We**  
8 **don't determine that. We have doctors and**  
9 **psychiatrists that determine that. We do not**  
10 **determine that as police officers. We determine if**  
11 **they are a danger to themselves or endangering someone**  
12 **else, at which time we act accordingly to take them to**  
13 **the proper facility to be properly looked after.**  
14 Q. That's training that you received in the  
15 academy or as in-service training?  
16 **A. Both.**  
17 Q. Do you know how recently you received any  
18 training in responding to situations involving mental  
19 health issues?  
20 **A. I cannot give you an exact date. The last**  
21 **training that I am aware of was dealt with our**  
22 **transportation policy being a little bit revamped on**  
23 **how -- who are we going to take to Delaware State**  
24 **Hospital or the Wilmington Hospital. Other than that,**

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1 **I can't recall any other training.**  
2 Q. Since completing the academy, have you received  
3 any in-service training on the law?  
4 **A. In the law?**  
5 Q. Law, I-a-w.  
6 **A. Updates on Supreme Court rulings. That's about**  
7 **the only thing I can think of that we've had any other**  
8 **updates on or that we've had any other training on.**  
9 Q. Have you been involved in any other shooting  
10 incidents other than this one involving the death of  
11 Harry Smith?  
12 **A. No.**  
13 Q. In your service to the Wilmington Police  
14 Department, have you ever shot anyone before?  
15 **A. No.**  
16 Q. Or since?  
17 **A. No.**  
18 MR. PARKINS: Would you read back, Kathy,  
19 the last question and answer, please?  
20 (The reporter read from the record as  
21 requested.)  
22 MR. PARKINS: Okay. Thank you.  
23 **BY MS. SULTON:**  
24 Q. Have you ever discharged your weapon before as

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1 a Wilmington police officer?  
2 MR. PARKINS: Other than at practice?  
3 Q. Have you ever discharged your weapon other than  
4 at Harry Smith in your service to the Wilmington  
5 Police Department?  
6 **A. At the range three times a year.**  
7 Q. Never at an animal?  
8 **A. No.**  
9 Q. Has anyone ever filed a complaint against you?  
10 **A. In reference to --**  
11 Q. Any kind of complaint ever.  
12 **A. Yes.**  
13 Q. Okay. Tell me about them.  
14 **A. I -- they are very numerous. I've had several**  
15 **complaints of use of force. I've had several**  
16 **complaints of improper language, all of which have**  
17 **been unsubstantiated.**  
18 Q. Let's talk about the use of force.  
19 **A. I can't recall them all.**  
20 Q. How many have there been?  
21 **A. I can't recall.**  
22 Q. More than ten?  
23 **A. I can't recall.**  
24 Q. As best you can recollect while sitting here

7 (Pages 22 to 25)

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1 today, do you think it's less than ten complaints of  
2 relating to improper use of force?  
3 MR. PARKINS: Objection to the form.  
4 **A. I can't recall.**  
5 Q. I asked for a complete copy of your personnel  
6 file, sir. Have you given it to me?  
7 **A. Me?**  
8 Q. Yes, sir.  
9 **A. You are asking me?**  
10 Q. Yes, sir.  
11 **A. I didn't -- I haven't given you anything.**  
12 Q. I don't have a complete copy of your personnel  
13 file.  
14 **A. Can I go back? I don't ever remember you ever**  
15 **asking me for anything, so it's --**  
16 Q. I have to go through counsel.  
17 **A. Okay.**  
18 Q. But given the answer that you gave me that you  
19 have numerous complaints of use of force against you,  
20 I know now I don't have your complete personnel file  
21 because I haven't seen numerous complaints against you  
22 in the documents your lawyer sent me and I'm really  
23 concerned about that.  
24 **A. I don't believe you would have seen it in my**

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1 **personnel file.**  
2 Q. I'm going to conclude this deposition and I'm  
3 going to reserve the right to come back and depose you  
4 because I have a right to depose you on the basis of  
5 having a complete copy of your personnel file.  
6 MR. PARKINS: Counselor, you if you do  
7 conclude the deposition now --  
8 MS. SULTON: Are you saying I have all of  
9 them? Are you representing that I was sent all of the  
10 numerous use-of-force complaints about which he just  
11 testified? That if you're saying I have them all  
12 based upon what you believe to be true, then I will  
13 continue with this deposition.  
14 But I have not, and I'm telling you the  
15 honest to goodness truth, John, I have not seen in the  
16 file, his personnel file you sent to me, numerous  
17 complaints of use of force against him or any other  
18 officer, not numerous.  
19 MR. PARKINS: Counselor, may I speak  
20 without being interrupted?  
21 MS. SULTON: You may, Counsel, but I want  
22 to make it clear that I flew here from Seattle,  
23 Washington, to take this man's deposition on the  
24 assumption that I had a complete copy of his personnel

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1 file that would include all of the use-of-force  
2 complaints against him so that I could question him  
3 about those.  
4 And when he just said "numerous," that term  
5 is not consistent with what I believe I have seen. So  
6 I've made my record.  
7 Why don't you make your record and then  
8 we'll continue the deposition.  
9 MR. PARKINS: Counselor, I did provide you  
10 with his entire personnel file. If you decide to  
11 adjourn the deposition --  
12 MS. SULTON: I'm not going to adjourn it.  
13 I'm not going to adjourn it. I'm going to continue.  
14 I'll just file a motion to compel as necessary. I'm  
15 not going to adjourn it because I came here from  
16 Seattle and I'm not coming back here again to see this  
17 man until trial.  
18 So let's continue unless you want to make a  
19 further statement on the record.  
20 MR. PARKINS: Since you interrupted me  
21 again, I won't bother.  
22 MS. SULTON: Okay. Good. Let's go.  
23 BY MS. SULTON:  
24 Q. Since September 13th, 2003, has anybody filed a

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1 complaint against you alleging that you use too much  
2 force?  
3 **A. No.**  
4 Q. Prior to September 13, 2003, in the year of  
5 2003, did anybody file a complaint against you about  
6 using too much force?  
7 **A. No.**  
8 Q. What about in the year 2002?  
9 **A. No.**  
10 Q. 2001?  
11 **A. No.**  
12 Q. 2000?  
13 **A. I can't recall.**  
14 Q. 1999?  
15 **A. I can't recall anything other than past 2000.**  
16 **I know that nothing was done after 2000. The reason I**  
17 **know that is that's when I was promoted and I haven't**  
18 **been in that situation since then.**  
19 Q. So in 1999, do you don't think that anyone  
20 filed a complaint against you?  
21 **A. I can't answer that. I don't know.**  
22 Q. What about 1998?  
23 **A. Like I just said, I don't know anything after**  
24 **2000. I know that there were complaints made of me**

8 (Pages 26 to 29)

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1 **A. I was escorted to the detective conference room**  
2 **or we were told to go to the detective conference**  
3 **room. Lieutenant Mulrine took us up there and pretty**  
4 **much at that point along we were in there awaiting our**  
5 **interviews. And that's pretty much all we did. We**  
6 **just sat in there awaiting our interviews.**

7 Q. Your interview occurred about 1:00 in the  
8 morning?

9 **A. I can't give you -- I know it was after one,**  
10 **but I can't give you exact time.**

11 Q. Now, you do realize we are not alleging in this  
12 suit any issues pertaining to race?

13 **A. I don't know what you are alleging.**

14 Q. Have you seen the lawsuit?

15 **A. Yeah, I've read over it.**

16 Q. You didn't see any allegations of race in  
17 there, did you?

18 **A. No.**

19 Q. Race doesn't matter in this case.

20 Let me go through a couple of issues with  
21 you, if I could

22 Have you received any training, whether you  
23 were in the academy or in-service training, related to  
24 or seen any policy statements or any directives or any

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1 guidelines relating to whether or not you should or  
2 should not shoot at a moving vehicle?

3 **A. We have a policy in our use-of-force continuum**  
4 **that states that we are not supposed to shoot at a**  
5 **moving vehicle unless it's exigent circumstances and**  
6 **of a life-threatening situation.**

7 Q. That's in the use-of-force policy?

8 **A. Yes.**

9 Q. Do you know the number?

10 **A. The exact number of the directive?**

11 Q. Yes.

12 **A. It would be in Chapter 6, but no, I don't have**  
13 **the exact number of the directive. It's a very small,**  
14 **two-line paragraph.**

15 Q. Is it in your standards manual?

16 **A. It's in our police officer's manual, what we**  
17 **call The White Book because it's in a white book.**

18 MS. SULTON: I didn't get that. I asked  
19 for it.

20 MR. PARKINS: You received the police  
21 officer's manual.

22 MS. SULTON: Right. So let me do it as a  
23 question.  
24

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1 BY MS. SULTON:

2 Q. I requested all of the documents, guidelines,  
3 policies, and so forth on use of force and I received  
4 a police officer's manual that's a couple of inches,  
5 maybe three inches thick?

6 **A. Four inches, actually.**

7 Q. Four inches? Yes, I would agree with you.

8 It's about four inches thick. I did not see a

9 specific policy on --

10 **A. It is something you must search for, ma'am. It**  
11 **is on the use-of-force policies, Chapter 6. I cannot**  
12 **recall what the exact directive it is, but it is in**  
13 **there.**

14 Q. So the policy, then, is in Chapter 6?

15 **A. I can't give it to you verbatim, but pretty**  
16 **much it's what I said.**

17 Q. Other than the policy statement that says  
18 generally you're not supposed to shot at a moving  
19 vehicle, have you received any specific training on  
20 what you should do vis-a-vis a moving vehicle if  
21 you're trying to stop it?

22 **A. I can't recall what training I've had. I have**  
23 **observed videos during -- it wouldn't be specific**  
24 **training on that specific item. It probably would**

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1 **have been either a use of force or more likely a**  
2 **weapons qualification type of training where they**  
3 **would have shown us -- I recall on my 19 years of**  
4 **seeing videos of different weapons being utilized on**  
5 **vehicles moving and not moving and what they do to it**  
6 **and what they don't do to them.**

7 **Other than that, I can't give you a date**  
8 **and time. I can't give you what the training was.**  
9 **But I do recall having that type of information given**  
10 **to me through videos and some type -- like I said, I**  
11 **don't know what actual training it was. I know I've**  
12 **never had training on something saying training on**  
13 **shooting at a moving vehicle. There's never been**  
14 **anything dealing with that. It would have been**  
15 **encompassed in some other type of training, you know.**

16 Q. Would it have been in-service versus academy?

17 **A. I've had a lot of training in-service and out**  
18 **and -- other agencies. So I don't know when it would**  
19 **have been or what type of training it would have been.**

20 Q. So what other agencies have provided you with  
21 training? Have you gone to like the FBI training  
22 academy in Quantico, Virginia?

23 **A. I've been trained -- I'm an expert in**  
24 **electronic surveillance. I've been trained by the**

14 (Pages 50 to 53)

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE**

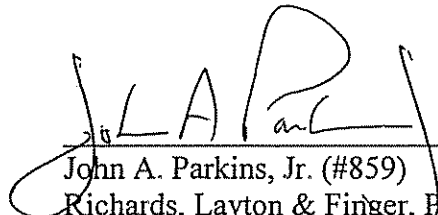
**CERTIFICATE OF SERVICE**

I hereby certify that on February 21, 2007, I electronically filed the foregoing document with the Clerk of Court using CM/ECF which will send notification of such filing(s) and Hand Delivered to the following:

Kester I.H. Crosse, Esquire  
Williams & Crosse  
1214 King Street  
Suite 300  
Wilmington, DE 19801

I hereby certify that on February 21, 2007, I have sent by U.S. Regular Mail, the foregoing document to the following non-registered participants:

Anne T. Sulton, Esquire  
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Olympia, WA 98507

  
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